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AN ACT
RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR
INTERESTS IN GEOTHERMAL, SOLAR THERMAL, SOLAR PHOTOVOLTAIC
AND COAL-BASED ELECTRIC GENERATING FACILITIES; CREATING THE
ADVANCED ENERGY TAX CREDITS FOR PERSONS WITH LEASEHOLD OR
PARTIAL INTERESTS IN CERTAIN ADVANCED ENERGY GENERATING
FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is
enacted to read:

"ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to
this section may be referred to as the "advanced energy
income tax credit".

B. A taxpayer who holds an interest in a qualified
generating facility located in New Mexico and who files an
individual New Mexico income tax return may claim an advanced
energy income tax credit in an amount equal to six percent of
the eligible generation plant costs of a qualified generating
facility, subject to the limitations imposed in this section.
The tax credit claimed shall be verified and approved by the
department.

C. An entity that holds an interest in a qualified
generating facility may request a certificate of eligibility

1 from the department of environment to enable the requester to
2 apply for an advanced energy income tax credit. The
3 department of environment:

4 (1) shall determine if the facility is a
5 qualified generating facility;

6 (2) shall require that the requester provide
7 the department of environment with the information necessary
8 to assess whether the requester's facility meets the criteria
9 to be a qualified generating facility;

10 (3) shall issue a certificate to the
11 requester stating that the facility is or is not a qualified
12 generating facility within one hundred eighty days after
13 receiving all information necessary to make a determination;

14 (4) shall:

15 (a) issue a schedule of fees in which
16 no fee exceeds one hundred fifty thousand dollars (\$150,000);
17 and

18 (b) deposit fees collected pursuant to
19 this paragraph in the state air quality permit fund created
20 pursuant to Section 74-2-15 NMSA 1978; and

21 (5) shall report annually to the appropriate
22 interim legislative committee information that will allow the
23 legislative committee to analyze the effectiveness of the
24 advanced energy tax credits, including the identity of
25 qualified generating facilities, the energy production means

1 used, the amount of emissions identified in this section
2 reduced and removed by those qualified generating facilities
3 and whether any requests for certificates of eligibility
4 could not be approved due to program limits.

5 D. A taxpayer who holds an interest in a qualified
6 generating facility may be allocated the right to claim the
7 advanced energy income tax credit without regard to the
8 taxpayer's relative interest in the qualified generating
9 facility if:

10 (1) the business entity making the
11 allocation provides notice of the allocation and the
12 taxpayer's interest in the qualified generating facility to
13 the department on forms prescribed by the department;

14 (2) allocations to the taxpayer and all
15 other taxpayers allocated a right to claim the advanced
16 energy tax credit shall not exceed one hundred percent of the
17 advanced energy tax credit allowed for the qualified
18 generating facility; and

19 (3) the taxpayer and all other taxpayers
20 allocated a right to claim the advanced energy tax credits
21 collectively own at least a five percent interest in the
22 qualified generating facility.

23 E. To claim the advanced energy income tax credit,
24 a taxpayer shall submit with the taxpayer's New Mexico income
25 tax return a certificate of eligibility from the department

1 of environment stating that the taxpayer may be eligible for
2 advanced energy tax credits. The taxation and revenue
3 department shall provide credit claims forms. A credit claim
4 form shall accompany any return in which the taxpayer wishes
5 to apply for an approved credit, and the claim shall specify
6 the amount of credit intended to apply to each return. The
7 taxation and revenue department shall determine the amount of
8 advanced energy income tax credit for which the taxpayer may
9 apply.

10 F. Upon receipt of the notice of an allocation of
11 the right to claim all or a portion of the advanced energy
12 income tax credit, the department shall verify the allocation
13 due to the recipient.

14 G. A husband and wife who file separate returns
15 for a taxable year in which they could have filed a joint
16 return may each claim only one-half of the advanced energy
17 income tax credit that would have been allowed on a joint
18 return.

19 H. The total amount of all advanced energy tax
20 credits claimed shall not exceed the total amount determined
21 by the department to be allowable pursuant to this section,
22 the Corporate Income and Franchise Tax Act and Section 7-9G-2
23 NMSA 1978.

24 I. Any balance of the advanced energy income tax
25 credit that the taxpayer is approved to claim may be claimed

1 by the taxpayer as an advanced energy combined reporting tax
2 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the
3 advanced energy income tax credit exceeds the amount of the
4 taxpayer's tax liabilities pursuant to the Income Tax Act and
5 Section 7-9G-2 NMSA 1978 in the taxable year in which it is
6 claimed, the balance of the unpaid credit may be carried
7 forward for ten years and claimed as an advanced energy
8 income tax credit or an advanced energy combined reporting
9 tax credit. The advanced energy income tax credit is not
10 refundable.

11 J. A taxpayer claiming the advanced energy income
12 tax credit pursuant to this section is ineligible for credits
13 pursuant to the Investment Credit Act or any other credit
14 that may be taken pursuant to the Income Tax Act or credits
15 that may be taken against the gross receipts tax,
16 compensating tax or withholding tax for the same
17 expenditures.

18 K. The aggregate amount of all advanced energy tax
19 credits that may be claimed with respect to a qualified
20 generating facility shall not exceed sixty million dollars
21 (\$60,000,000).

22 L. As used in this section:

23 (1) "advanced energy tax credit" means the
24 advanced energy income tax credit, the advanced energy
25 corporate income tax credit and the advanced energy combined

1 reporting tax credit;

2 (2) "coal-based electric generating
3 facility" means a new or repowered generating facility and an
4 associated coal gasification facility, if any, that uses coal
5 to generate electricity and that meets the following
6 specifications:

7 (a) emits the lesser of: 1) what is
8 achievable with the best available control technology; or 2)
9 thirty-five thousandths pound per million British thermal
10 units of sulfur dioxide, twenty-five thousandths pound per
11 million British thermal units of oxides of nitrogen and one
12 hundredth pound per million British thermal units of total
13 particulates in the flue gas;

14 (b) removes the greater of: 1) what is
15 achievable with the best available control technology; or 2)
16 ninety percent of the mercury from the input fuel;

17 (c) captures and sequesters or controls
18 carbon dioxide emissions so that by the later of
19 January 1, 2017 or eighteen months after the commercial
20 operation date of the coal-based electric generating
21 facility, no more than one thousand one hundred pounds per
22 megawatt-hour of carbon dioxide is emitted into the
23 atmosphere;

24 (d) all infrastructure required for
25 sequestration is in place by the later of January 1, 2017 or

1 eighteenth months after the commercial operation date of the
2 coal-based electric generating facility;

3 (e) includes methods and procedures to
4 monitor the disposition of the carbon dioxide captured and
5 sequestered from the coal-based electric generating facility;
6 and

7 (f) does not exceed a name-plate
8 capacity of seven hundred net megawatts;

9 (3) "eligible generation plant costs" means
10 expenditures for the development and construction of a
11 qualified generating facility, including permitting; site
12 characterization and assessment; engineering; design; carbon
13 dioxide capture, treatment, compression, transportation and
14 sequestration; site and equipment acquisition; and fuel
15 supply development used directly and exclusively in a
16 qualified generating facility;

17 (4) "entity" means an individual, estate,
18 trust, receiver, cooperative association, club, corporation,
19 company, firm, partnership, limited liability company,
20 limited liability partnership, joint venture, syndicate or
21 other association or a gas, water or electric utility owned
22 or operated by a county or municipality;

23 (5) "geothermal electric generating
24 facility" means a facility with a name-plate capacity of one
25 megawatt or more that uses geothermal energy to generate

1 electricity, including a facility that captures and provides
2 geothermal energy to a preexisting electric generating
3 facility using other fuels in part;

4 (6) "interest in a qualified generating
5 facility" means title to a qualified generating facility; a
6 leasehold interest in a qualified generating facility; an
7 ownership interest in a business or entity that is taxed for
8 federal income tax purposes as a partnership that holds title
9 to or a leasehold interest in a qualified generating
10 facility; or an ownership interest, through one or more
11 intermediate entities that are each taxed for federal income
12 tax purposes as a partnership, in a business that holds title
13 to or a leasehold interest in a qualified generating
14 facility;

15 (7) "name-plate capacity" means the maximum
16 rated output of the facility measured as alternating current
17 or the equivalent direct current measurement;

18 (8) "qualified generating facility" means a
19 facility that begins construction not later than
20 December 31, 2015 and is:

21 (a) a solar thermal electric
22 generating facility that begins construction on or after
23 July 1, 2007 and that may include an associated renewable
24 energy storage facility;

25 (b) a solar photovoltaic electric

1 generating facility that begins construction on or after
2 July 1, 2009 and that may include an associated renewable
3 energy storage facility;

4 (c) a geothermal electric generating
5 facility that begins construction on or after July 1, 2009;

6 (d) a recycled energy project if that
7 facility begins construction on or after July 1, 2007; or

8 (e) a new or repowered coal-based
9 electric generating facility and an associated coal
10 gasification facility;

11 (9) "recycled energy" means energy produced
12 by a generation unit with a name-plate capacity of not more
13 than fifteen megawatts that converts the otherwise lost
14 energy from the exhaust stacks or pipes to electricity
15 without combustion of additional fossil fuel;

16 (10) "sequester" means to store, or
17 chemically convert, carbon dioxide in a manner that prevents
18 its release into the atmosphere and may include the use of
19 geologic formations and enhanced oil, coalbed methane or
20 natural gas recovery techniques;

21 (11) "solar photovoltaic electric generating
22 facility" means an electric generating facility with a
23 name-plate capacity of one megawatt or more that uses solar
24 photovoltaic energy to generate electricity; and

25 (12) "solar thermal generating facility"

1 means an electric generating facility with a name-plate
2 capacity of one megawatt or more that uses solar thermal
3 energy to generate electricity, including a facility that
4 captures and provides solar energy to a preexisting electric
5 generating facility using other fuels in part."

6 Section 2. A new section of the Corporate Income and
7 Franchise Tax Act is enacted to read:

8 "ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--

9 A. The tax credit that may be claimed pursuant to
10 this section may be referred to as the "advanced energy
11 corporate income tax credit".

12 B. A taxpayer that holds an interest in a
13 qualified generating facility located in New Mexico and that
14 files a New Mexico corporate income tax return may claim an
15 advanced energy corporate income tax credit in an amount
16 equal to six percent of the eligible generation plant costs
17 of a qualified generating facility, subject to the
18 limitations imposed in this section. The tax credit claimed
19 shall be verified and approved by the department.

20 C. An entity that holds an interest in a
21 qualified generating facility may request a certificate of
22 eligibility from the department of environment to enable the
23 requester to apply for an advanced energy corporate income
24 tax credit. The department of environment:

25 (1) shall determine if the facility is a

1 qualified generating facility;

2 (2) shall require that the requester provide
3 the department of environment with the information necessary
4 to assess whether the requester's facility meets the criteria
5 to be a qualified generating facility;

6 (3) shall issue a certificate to the
7 requester stating that the facility is or is not a qualified
8 generating facility within one hundred eighty days after
9 receiving all information necessary to make a determination;

10 (4) shall:

11 (a) issue a schedule of fees in which
12 no fee exceeds one hundred fifty thousand dollars (\$150,000);
13 and

14 (b) deposit fees collected pursuant to
15 this paragraph in the state air quality permit fund created
16 pursuant to Section 74-2-15 NMSA 1978; and

17 (5) shall report annually to the appropriate
18 interim legislative committee information that will allow the
19 legislative committee to analyze the effectiveness of the
20 advanced energy tax credits, including the identity of
21 qualified generating facilities, the energy production means
22 used, the amount of emissions identified in this section
23 reduced and removed by those qualified generating facilities
24 and whether any requests for certificates of eligibility
25 could not be approved due to program limits.

1 D. A taxpayer that holds an interest in a
2 qualified generating facility may be allocated the right to
3 claim the advanced energy corporate income tax credit without
4 regard to the taxpayer's relative interest in the qualified
5 generating facility if:

6 (1) the business entity making the
7 allocation provides notice of the allocation and the
8 taxpayer's interest in the qualified generating facility to
9 the department on forms prescribed by the department;

10 (2) allocations to the taxpayer and all
11 other taxpayers allocated a right to claim the advanced
12 energy tax credit shall not exceed one hundred percent of the
13 advanced energy tax credit allowed for the qualified
14 generating facility; and

15 (3) the taxpayer and all other taxpayers
16 allocated a right to claim the advanced energy tax credits
17 collectively own at least a five percent interest in the
18 qualified generating facility.

19 E. Upon receipt of the notice of an allocation of
20 the right to claim all or a portion of the advanced energy
21 corporate income tax credit, the department shall verify the
22 allocation due to the recipient.

23 F. To claim the advanced energy corporate income
24 tax credit, a taxpayer shall submit with the taxpayer's New
25 Mexico corporate income tax return a certificate of

1 eligibility from the department of environment stating that
2 the taxpayer may be eligible for advanced energy tax credits.
3 The taxation and revenue department shall provide credit
4 claim forms. A credit claim form shall accompany any return
5 in which the taxpayer wishes to apply for an approved credit,
6 and the claim shall specify the amount of credit intended to
7 apply to each return. The taxation and revenue department
8 shall determine the amount of advanced energy corporate
9 income tax credit for which the taxpayer may apply.

10 G. The total amount of all advanced energy tax
11 credits claimed shall not exceed the total amount determined
12 by the department to be allowable pursuant to this section,
13 the Income Tax Act and Section 7-9G-2 NMSA 1978.

14 H. Any balance of the advanced energy corporate
15 income tax credit that the taxpayer is approved to claim may
16 be claimed by the taxpayer as an advanced energy combined
17 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
18 1978. If the advanced energy corporate income tax credit
19 exceeds the amount of the taxpayer's tax liabilities pursuant
20 to the Corporate Income and Franchise Tax Act and Section
21 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
22 the balance of the unpaid credit may be carried forward for
23 ten years and claimed as an advanced energy corporate income
24 tax credit or an advanced energy combined reporting tax
25 credit. The advanced energy corporate income tax credit is

1 not refundable.

2 I. A taxpayer claiming the advanced energy
3 corporate income tax credit pursuant to this section is
4 ineligible for credits pursuant to the Investment Credit Act
5 or any other credit that may be taken pursuant to the
6 Corporate Income and Franchise Tax Act or credits that may be
7 taken against the gross receipts tax, compensating tax or
8 withholding tax for the same expenditures.

9 J. The aggregate amount of all advanced energy
10 tax credits that may be claimed with respect to a qualified
11 generating facility shall not exceed sixty million dollars
12 (\$60,000,000).

13 K. As used in this section:

14 (1) "advanced energy tax credit" means the
15 advanced energy income tax credit, the advanced energy
16 corporate income tax credit and the advanced energy combined
17 reporting tax credit;

18 (2) "coal-based electric generating
19 facility" means a new or repowered generating facility and an
20 associated coal gasification facility, if any, that uses coal
21 to generate electricity and that meets the following
22 specifications:

23 (a) emits the lesser of: 1) what is
24 achievable with the best available control technology; or 2)
25 thirty-five thousandths pound per million British thermal

1 units of sulfur dioxide, twenty-five thousandths pound per
2 million British thermal units of oxides of nitrogen and one
3 hundredth pound per million British thermal units of total
4 particulates in the flue gas;

5 (b) removes the greater of: 1) what
6 is achievable with the best available control technology; or
7 2) ninety percent of the mercury from the input fuel;

8 (c) captures and sequesters or
9 controls carbon dioxide emissions so that by the later of
10 January 1, 2017 or eighteen months after the commercial
11 operation date of the coal-based electric generating
12 facility, no more than one thousand one hundred pounds per
13 megawatt-hour of carbon dioxide is emitted into the
14 atmosphere;

15 (d) all infrastructure required for
16 sequestration is in place by the later of January 1, 2017 or
17 eighteen months after the commercial operation date of the
18 coal-based electric generating facility;

19 (e) includes methods and procedures to
20 monitor the disposition of the carbon dioxide captured and
21 sequestered from the coal-based electric generating facility;
22 and

23 (f) does not exceed a name-plate
24 capacity of seven hundred net megawatts;

25 (3) "eligible generation plant costs" means

1 expenditures for the development and construction of a
2 qualified generating facility, including permitting; site
3 characterization and assessment; engineering; design; carbon
4 dioxide capture, treatment, compression, transportation and
5 sequestration; site and equipment acquisition; and fuel
6 supply development used directly and exclusively in a
7 qualified generating facility;

8 (4) "entity" means an individual, estate,
9 trust, receiver, cooperative association, club, corporation,
10 company, firm, partnership, limited liability company,
11 limited liability partnership, joint venture, syndicate or
12 other association or a gas, water or electric utility owned
13 or operated by a county or municipality;

14 (5) "geothermal electric generating
15 facility" means a facility with a name-plate capacity of one
16 megawatt or more that uses geothermal energy to generate
17 electricity, including a facility that captures and provides
18 geothermal energy to a preexisting electric generating
19 facility using other fuels in part;

20 (6) "interest in a qualified generating
21 facility" means title to a qualified generating facility; a
22 leasehold interest in a qualified generating facility; an
23 ownership interest in a business or entity that is taxed for
24 federal income tax purposes as a partnership that holds title
25 to or a leasehold interest in a qualified generating

1 facility; or an ownership interest, through one or more
2 intermediate entities that are each taxed for federal income
3 tax purposes as a partnership, in a business that holds title
4 to or a leasehold interest in a qualified generating
5 facility;

6 (7) "name-plate capacity" means the maximum
7 rated output of the facility measured as alternating current
8 or the equivalent direct current measurement;

9 (8) "qualified generating facility" means a
10 facility that begins construction not later than
11 December 31, 2015 and is:

12 (a) a solar thermal electric
13 generating facility that begins construction on or after
14 July 1, 2007 and that may include an associated renewable
15 energy storage facility;

16 (b) a solar photovoltaic electric
17 generating facility that begins construction on or after
18 July 1, 2009 and that may include an associated renewable
19 energy storage facility;

20 (c) a geothermal electric generating
21 facility that begins construction on or after July 1, 2009;

22 (d) a recycled energy project if that
23 facility begins construction on or after July 1, 2007; or

24 (e) a new or repowered coal-based
25 electric generating facility and an associated coal

1 gasification facility;

2 (9) "recycled energy" means energy produced
3 by a generation unit with a name-plate capacity of not more
4 than fifteen megawatts that converts the otherwise lost
5 energy from the exhaust stacks or pipes to electricity
6 without combustion of additional fossil fuel;

7 (10) "sequester" means to store, or
8 chemically convert, carbon dioxide in a manner that prevents
9 its release into the atmosphere and may include the use of
10 geologic formations and enhanced oil, coalbed methane or
11 natural gas recovery techniques;

12 (11) "solar photovoltaic electric
13 generating facility" means an electric generating facility
14 with a name-plate capacity of one megawatt or more that uses
15 solar photovoltaic energy to generate electricity; and

16 (12) "solar thermal electric generating
17 facility" means an electric generating facility with a
18 name-plate capacity of one megawatt or more that uses solar
19 thermal energy to generate electricity, including a facility
20 that captures and provides solar energy to a preexisting
21 electric generating facility using other fuels in part."

22 Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007,
23 Chapter 229, Section 1) is amended to read:

24 "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX
25 CREDIT--GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING

1 TAX.--

2 A. Except as otherwise provided in this section,
3 a taxpayer that holds an interest in a qualified generating
4 facility located in New Mexico may claim a credit to be
5 computed pursuant to the provisions of this section. The
6 credit provided by this section may be referred to as the
7 "advanced energy combined reporting tax credit".

8 B. As used in this section:

9 (1) "advanced energy tax credit" means the
10 advanced energy income tax credit, the advanced energy
11 corporate income tax credit and the advanced energy combined
12 reporting tax credit;

13 (2) "coal-based electric generating
14 facility" means a new or repowered generating facility and an
15 associated coal gasification facility, if any, that uses coal
16 to generate electricity and that meets the following
17 specifications:

18 (a) emits the lesser of: 1) what is
19 achievable with the best available control technology; or
20 2) thirty-five thousandths pound per million British thermal
21 units of sulfur dioxide, twenty-five thousandths pound per
22 million British thermal units of oxides of nitrogen and one
23 hundredth pound per million British thermal units of total
24 particulates in the flue gas;

25 (b) removes the greater of: 1) what

1 is achievable with the best available control technology; or

2 2) ninety percent of the mercury from the input fuel;

3 (c) captures and sequesters or
4 controls carbon dioxide emissions so that by the later of
5 January 1, 2017 or eighteen months after the commercial
6 operation date of the coal-based electric generating
7 facility, no more than one thousand one hundred pounds per
8 megawatt-hour of carbon dioxide is emitted into the
9 atmosphere;

10 (d) all infrastructure required for
11 sequestration is in place by the later of January 1, 2017 or
12 eighteen months after the commercial operation date of the
13 coal-based electric generating facility;

14 (e) includes methods and procedures to
15 monitor the disposition of the carbon dioxide captured and
16 sequestered from the coal-based electric generating facility;
17 and

18 (f) does not exceed a name-plate
19 capacity of seven hundred net megawatts;

20 (3) "department" means the taxation and
21 revenue department, the secretary of taxation and revenue or
22 any employee of the department exercising authority lawfully
23 delegated to that employee by the secretary;

24 (4) "eligible generation plant costs" means
25 expenditures for the development and construction of a

1 qualified generating facility, including permitting; site
2 characterization and assessment; engineering; design; carbon
3 dioxide capture, treatment, compression, transportation and
4 sequestration; site and equipment acquisition; and fuel
5 supply development used directly and exclusively in a
6 qualified generating facility;

7 (5) "entity" means an individual, estate,
8 trust, receiver, cooperative association, club, corporation,
9 company, firm, partnership, limited liability company,
10 limited liability partnership, joint venture, syndicate or
11 other association or a gas, water or electric utility owned
12 or operated by a county or municipality;

13 (6) "geothermal electric generating
14 facility" means a facility with a name-plate capacity of one
15 megawatt or more that uses geothermal energy to generate
16 electricity, including a facility that captures and provides
17 geothermal energy to a preexisting electric generating
18 facility using other fuels in part;

19 (7) "gross receipts tax due to the state"
20 means the taxpayer's gross receipts liability for the
21 reporting period that is:

22 (a) determined by, if the taxpayer's
23 business location is described in Subsection A of Section
24 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross
25 receipts for the reporting period by the difference between

1 the gross receipts tax rate specified in Section 7-9-4 NMSA
2 1978 and one and two hundred twenty-five thousandths percent;
3 or

4 (b) equal to, if the taxpayer's
5 business location is not described in Subsection A of Section
6 7-1-6.4 NMSA 1978, the gross receipts tax rate specified in
7 Section 7-9-4 NMSA 1978;

8 (8) "interest in a qualified generating
9 facility" means title to a qualified generating facility; a
10 leasehold interest in a qualified generating facility; an
11 ownership interest in a business or entity that is taxed for
12 federal income tax purposes as a partnership that holds title
13 to or a leasehold interest in a qualified generating
14 facility; or an ownership interest, through one or more
15 intermediate entities that are each taxed for federal income
16 tax purposes as a partnership, in a business that holds title
17 to or a leasehold interest in a qualified generating
18 facility;

19 (9) "name-plate capacity" means the maximum
20 rated output of the facility measured as alternating current
21 or the equivalent direct current measurement;

22 (10) "qualified generating facility" means
23 a facility that begins construction not later than
24 December 31, 2015 and is:

25 (a) a solar thermal electric

1 generating facility that begins construction on or after
2 July 1, 2007 and that may include an associated renewable
3 energy storage facility;

4 (b) a solar photovoltaic electric
5 generating facility that begins construction on or after
6 July 1, 2009 and that may include an associated renewable
7 energy storage facility;

8 (c) a geothermal electric generating
9 facility that begins construction on or after July 1, 2009;

10 (d) a recycled energy project if that
11 facility begins construction on or after July 1, 2007; or

12 (e) a new or repowered coal-based
13 electric generating facility and an associated coal
14 gasification facility;

15 (11) "recycled energy" means energy
16 produced by a generation unit with a name-plate capacity of
17 not more than fifteen megawatts that converts the otherwise
18 lost energy from the exhaust stacks or pipes to electricity
19 without combustion of additional fossil fuel;

20 (12) "sequester" means to store, or
21 chemically convert, carbon dioxide in a manner that prevents
22 its release into the atmosphere and may include the use of
23 geologic formations and enhanced oil, coalbed methane or
24 natural gas recovery techniques;

25 (13) "solar photovoltaic electric

1 generating facility" means an electric generating facility
2 with a name-plate capacity of one megawatt or more that uses
3 solar photovoltaic energy to generate electricity; and

4 (14) "solar thermal electric generating
5 facility" means an electric generating facility with a
6 name-plate capacity of one megawatt or more that uses solar
7 thermal energy to generate electricity, including a facility
8 that captures and provides solar energy to a preexisting
9 electric generating facility using other fuels in part.

10 C. A taxpayer that holds an interest in a
11 qualified generating facility may be allocated the right to
12 claim the advanced energy combined reporting tax credit
13 without regard to the taxpayer's relative interest in the
14 qualified generating facility if:

15 (1) the business entity making the
16 allocation provides notice of the allocation and the
17 taxpayer's interest in the qualified generating facility to
18 the department on forms prescribed by the department;

19 (2) allocations to the taxpayer and all
20 other taxpayers allocated a right to claim the advanced
21 energy tax credit shall not exceed one hundred percent of the
22 advanced energy tax credit allowed for the qualified
23 generating facility; and

24 (3) the taxpayer and all other taxpayers
25 allocated a right to claim the advanced energy tax credits

1 collectively own at least a five percent interest in the
2 qualified generating facility.

3 D. Upon receipt of the notice of an allocation of
4 the right to claim all or a portion of the advanced energy
5 combined reporting tax credit, the department shall verify
6 the allocation due to the recipient.

7 E. Subject to the limit imposed in Subsection K
8 of this section, the advanced energy combined reporting tax
9 credit with respect to a qualified generating facility shall
10 equal six percent of the eligible generation plant costs of
11 the qualified generating facility. Taxpayers eligible to
12 claim an advanced energy combined reporting tax credit
13 holding less than one hundred percent of the interest in the
14 qualified generating facility shall designate an individual
15 to report annually to the department. That designated
16 individual shall report the eligible generation plant costs
17 incurred during the calendar year and the relative interest
18 of those costs attributed to each eligible interest holder.
19 The taxpayers shall submit a copy of the relative interests
20 attributed to each interest holder to the department, and any
21 change to the apportioned interests shall be submitted to the
22 department. The designated person and the department may
23 identify a mutually acceptable reporting schedule.

24 F. A taxpayer may apply for the advanced energy
25 combined reporting tax credit by submitting to the taxation

1 and revenue department a certificate issued by the department
2 of environment pursuant to Subsection K of this section,
3 documentation showing the taxpayer's interest in the
4 qualified generating facility identified in the certificate,
5 documentation of all eligible generation plant costs incurred
6 by the taxpayer prior to the date of the application by the
7 taxpayer for the advanced energy combined reporting tax
8 credit and any other information the taxation and revenue
9 department requests to determine the amount of tax credit due
10 to the taxpayer.

11 G. A taxpayer having applied for and been granted
12 approval to claim an advanced energy combined reporting tax
13 credit by the department pursuant to this section may claim
14 an amount of available credit against the taxpayer's gross
15 receipts tax, compensating tax or withholding tax due to the
16 state. Any balance of the advanced energy combined reporting
17 tax credit that the taxpayer is approved to claim after
18 applying that tax credit against the taxpayer's gross
19 receipts tax, compensating tax or withholding tax liabilities
20 may be claimed by the taxpayer against the taxpayer's tax
21 liability pursuant to the Income Tax Act by claiming an
22 advanced energy income tax credit or against the taxpayer's
23 tax liability pursuant to the Corporate Income and Franchise
24 Tax Act by claiming an advanced energy corporate income tax
25 credit. The advanced energy combined reporting tax credit is

1 not refundable. The total amount of tax credit claimed
2 pursuant to this section, when combined with the advanced
3 energy tax credits claimed pursuant to the Income Tax Act and
4 the Corporate Income and Franchise Tax Act, shall not exceed
5 the total amount of advanced energy tax credits approved by
6 the department for the qualified generating facility.

7 H. A taxpayer that is liable for the payment of
8 gross receipts or compensating tax with respect to the
9 ownership, development, construction, maintenance or
10 operation of a new coal-based electric generating facility
11 that does not meet the criteria for a qualified generating
12 facility and that begins construction after January 1, 2007
13 shall not claim an advanced energy tax combined reporting
14 credit pursuant to this section or a gross receipts tax
15 credit, a compensating tax credit or a withholding tax credit
16 pursuant to any other state law.

17 I. If the amount of the advanced energy tax
18 credit approved by the department exceeds the taxpayer's
19 liability, the excess may be carried forward for up to ten
20 years.

21 J. The aggregate amount of advanced energy tax
22 credit that may be claimed with respect to each qualified
23 generating facility shall not exceed sixty million dollars
24 (\$60,000,000).

25 K. An entity that holds an interest in a

1 qualified generating facility may request a certificate of
2 eligibility from the department of environment to enable the
3 requester to apply for the advanced energy combined reporting
4 tax credit. The department of environment:

5 (1) shall determine if the facility is a
6 qualified generating facility;

7 (2) shall require that the requester
8 provide the department of environment with the information
9 necessary to assess whether the requester's facility meets
10 the criteria to be a qualified generating facility;

11 (3) shall issue a certificate to the
12 requester stating that the facility is or is not a qualified
13 generating facility within one hundred eighty days after
14 receiving all information necessary to make a determination;

15 (4) shall:

16 (a) issue rules governing the
17 procedure for administering the provisions of this subsection
18 and Subsection L of this section and for providing
19 certificates of eligibility for advanced energy tax credits;

20 (b) issue a schedule of fees in which
21 no fee exceeds one hundred fifty thousand dollars (\$150,000);
22 and

23 (c) deposit fees collected pursuant to
24 this paragraph in the state air quality permit fund created
25 pursuant to Section 74-2-15 NMSA 1978; and

1 (5) shall report annually to the
2 appropriate interim legislative committee information that
3 will allow the legislative committee to analyze the
4 effectiveness of the advanced energy tax credits, including
5 the identity of qualified generating facilities, the energy
6 production means used, the amount of emissions identified in
7 this section reduced and removed by those qualified
8 generating facilities and whether any requests for
9 certificates of eligibility could not be approved due to
10 program limits.

11 L. If the department of environment issues a
12 certificate of eligibility to a taxpayer stating that the
13 taxpayer holds an interest in a qualified generating facility
14 and the taxpayer does not sequester or control carbon dioxide
15 emissions to the extent required by this section by the later
16 of January 1, 2017 or eighteen months after the commercial
17 operation date of the qualified generating facility, the
18 taxpayer's certification as a qualified generating facility
19 shall be revoked by the department of environment and the
20 taxpayer shall repay to the state tax credits granted pursuant
21 to this section; provided that if the taxpayer demonstrates to
22 the department of environment that the taxpayer made every
23 effort to sequester or control carbon dioxide emissions to the
24 extent feasible and the facility's inability to meet the
25 sequestration requirements of a qualified generating facility

1 was beyond the facility's control, in which case the
2 department of environment shall determine, after a public
3 hearing, the amount of the tax credit that should be repaid to
4 the state. The department of environment, in its
5 determination, shall consider the environmental performance of
6 the facility and the extent to which the inability to meet the
7 sequestration requirements of a qualified generating facility
8 was in the control of the taxpayer. The repayment as
9 determined by the department of environment shall be paid
10 within one hundred eighty days following a final order by the
11 department of environment.

12 M. Expenditures for which a taxpayer claims an
13 advanced energy combined reporting tax credit pursuant to this
14 section are ineligible for credits pursuant to the provisions
15 of the Investment Credit Act or any other credit against
16 personal income tax, corporate income tax, compensating tax,
17 gross receipts tax or withholding tax.

18 N. A taxpayer shall apply for approval for a
19 credit within one year following the end of the calendar year
20 in which the eligible generation plant costs are incurred."==

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